

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

SHIRLEY AGULLANA,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

No. 2:23-CV-1674-DMC

MEMORANDUM OPINION AND ORDER

Plaintiff, who is proceeding with retained counsel, brings this action for judicial review of a final decision of the Commissioner of Social Security under 42 U.S.C. § 405(g). Pursuant to the written consent of all parties, ECF Nos. 7 and 9, this case is before the undersigned as the presiding judge for all purposes, including entry of final judgment. See 28 U.S.C. § 636(c). Pending before the Court are the parties' briefs on the merits, ECF Nos. 12, 14, and 15.

The Court reviews the Commissioner's final decision to determine whether it is: (1) based on proper legal standards; and (2) supported by substantial evidence in the record as a whole. See Tackett v. Apfel, 180 F.3d 1094, 1097 (9th Cir. 1999). "Substantial evidence" is more than a mere scintilla, but less than a preponderance. See Saelee v. Chater, 94 F.3d 520, 521 (9th Cir. 1996). It is "... such evidence as a reasonable mind might accept as adequate to support

a conclusion.” Richardson v. Perales, 402 U.S. 389, 402 (1971). The record as a whole, including both the evidence that supports and detracts from the Commissioner’s conclusion, must be considered and weighed. See Howard v. Heckler, 782 F.2d 1484, 1487 (9th Cir. 1986); Jones v. Heckler, 760 F.2d 993, 995 (9th Cir. 1985). The Court may not affirm the Commissioner’s decision simply by isolating a specific quantum of supporting evidence. See Hammock v. Bowen, 879 F.2d 498, 501 (9th Cir. 1989). If substantial evidence supports the administrative findings, or if there is conflicting evidence supporting a particular finding, the finding of the Commissioner is conclusive. See Sprague v. Bowen, 812 F.2d 1226, 1229-30 (9th Cir. 1987). Therefore, where the evidence is susceptible to more than one rational interpretation, one of which supports the Commissioner’s decision, the decision must be affirmed, see Thomas v. Barnhart, 278 F.3d 947, 954 (9th Cir. 2002), and may be set aside only if an improper legal standard was applied in weighing the evidence, see Burkhart v. Bowen, 856 F.2d 1335, 1338 (9th Cir. 1988).

For the reasons discussed below, the matter will be remanded for further proceedings.

I. THE DISABILITY EVALUATION PROCESS

To achieve uniformity of decisions, the Commissioner employs a five-step sequential evaluation process to determine whether a claimant is disabled. See 20 C.F.R. §§ 404.1520 (a)-(f) and 416.920(a)-(f). The sequential evaluation proceeds as follows:

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| Step 1 | Determination whether the claimant is engaged in substantial gainful activity; if so, the claimant is presumed not disabled and the claim is denied; |
| Step 2 | If the claimant is not engaged in substantial gainful activity, determination whether the claimant has a severe impairment; if not, the claimant is presumed not disabled and the claim is denied; |
| Step 3 | If the claimant has one or more severe impairments, determination whether any such severe impairment meets or medically equals an impairment listed in the regulations; if the claimant has such an impairment, the claimant is presumed disabled and the claim is granted; |

Step 4 If the claimant's impairment is not listed in the regulations, determination whether the impairment prevents the claimant from performing past work in light of the claimant's residual functional capacity; if not, the claimant is presumed not disabled and the claim is denied;

Step 5 If the impairment prevents the claimant from performing past work, determination whether, in light of the claimant's residual functional capacity, the claimant can engage in other types of substantial gainful work that exist in the national economy; if so, the claimant is not disabled and the claim is denied.

See 20 C.F.R. §§ 404.1520 (a)-(f) and 416.920(a)-(f).

To qualify for benefits, the claimant must establish the inability to engage in substantial gainful activity due to a medically determinable physical or mental impairment which has lasted, or can be expected to last, a continuous period of not less than 12 months. See 42 U.S.C. § 1382c(a)(3)(A). The claimant must provide evidence of a physical or mental impairment of such severity the claimant is unable to engage in previous work and cannot, considering the claimant's age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy. See Quang Van Han v. Bower, 882 F.2d 1453, 1456 (9th Cir. 1989). The claimant has the initial burden of proving the existence of a disability. See Terry v. Sullivan, 903 F.2d 1273, 1275 (9th Cir. 1990).

The claimant establishes a prima facie case by showing that a physical or mental impairment prevents the claimant from engaging in previous work. See Gallant v. Heckler, 753 F.2d 1450, 1452 (9th Cir. 1984); 20 C.F.R. §§ 404.1520(f) and 416.920(f). If the claimant establishes a prima facie case, the burden then shifts to the Commissioner to show the claimant can perform other work existing in the national economy. See Burkhart v. Bowen, 856 F.2d 1335, 1340 (9th Cir. 1988); Hoffman v. Heckler, 785 F.2d 1423, 1425 (9th Cir. 1986); Hammock v. Bowen, 867 F.2d 1209, 1212-1213 (9th Cir. 1989).

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II. THE COMMISSIONER'S FINDINGS

Plaintiff applied for social security benefits on February 28, 2021. See CAR 17.¹ In the application, Plaintiff claims disability began on November 17, 2020. See id. Plaintiff's claim was initially denied. Following denial of reconsideration, Plaintiff requested an administrative hearing, which was held on September 20, 2022, before Administrative Law Judge (ALJ) Vincent Misenti. In a November 3, 2022, decision, the ALJ concluded Plaintiff is not disabled based on the following relevant findings:

1. The claimant has the following severe impairment(s): bipolar disorder with anxiety and depression;
2. The claimant does not have an impairment or combination of impairments that meets or medically equals an impairment listed in the regulations;
3. The claimant has the following residual functional capacity: full range of work at all exertional levels; the claimant is able to perform simple, routine, and repetitive tasks; the claimant is able to occasionally interact with supervisors, coworkers, and the public; the claimant is able to tolerate few changes in a routine work setting, defined as occasional work changes;
4. Considering the claimant's age, education, work experience, residual functional capacity, and vocational expert testimony, there are jobs that exist in significant numbers in the national economy that the claimant can perform.

See id. at 20-28.

After the Appeals Council declined review on June 20, 2023, this appeal followed.

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¹ Citations are to the Certified Administrative Record (CAR) lodged on September 29, 2023, ECF No. 11.

III. DISCUSSION

In her opening brief, Plaintiff argues the ALJ failed to provide sufficient reasons for rejecting her subjective statements and testimony. See ECF No. 12.

The Commissioner determines the weight to be given to a claimant's own statements and testimony, and the court defers to the Commissioner's discretion if the Commissioner used the proper process and provided proper reasons. See Saelee v. Chater, 94 F.3d 520, 522 (9th Cir. 1996). An explicit finding must be supported by specific, cogent reasons. See Rashad v. Sullivan, 903 F.2d 1229, 1231 (9th Cir. 1990). General findings are insufficient. See Lester v. Chater, 81 F.3d 821, 834 (9th Cir. 1995). Rather, the Commissioner must identify what testimony is not afforded weight and what evidence undermines the testimony. See id. Moreover, unless there is affirmative evidence in the record of malingering, the Commissioner's reasons for rejecting testimony as not credible must be "clear and convincing." See id.; see also Carmickle v. Commissioner, 533 F.3d 1155, 1160 (9th Cir. 2008) (citing Lingenfelter v Astrue, 504 F.3d 1028, 1936 (9th Cir. 2007), and Gregor v. Barnhart, 464 F.3d 968, 972 (9th Cir. 2006)).

If there is objective medical evidence of an underlying impairment, the Commissioner may not discredit a claimant's testimony as to the severity of symptoms merely because they are unsupported by objective medical evidence. See Bunnell v. Sullivan, 947 F.2d 341, 347-48 (9th Cir. 1991) (en banc). As the Ninth Circuit explained in Smolen v. Chater:

The claimant need not produce objective medical evidence of the [symptom] itself, or the severity thereof. Nor must the claimant produce objective medical evidence of the causal relationship between the medically determinable impairment and the symptom. By requiring that the medical impairment "could reasonably be expected to produce" pain or another symptom, the Cotton test requires only that the causal relationship be a reasonable inference, not a medically proven phenomenon.

80 F.3d 1273, 1282 (9th Cir. 1996) (referring to the test established in Cotton v. Bowen, 799 F.2d 1403 (9th Cir. 1986)).

The Commissioner may, however, consider the nature of the symptoms alleged, including aggravating factors, medication, treatment, and functional restrictions. See Bunnell, 947 F.2d at 345-47. In weighing a claimant's statements and testimony, the Commissioner may also consider: (1) the claimant's reputation for truthfulness, prior inconsistent statements, or other

1 inconsistent testimony; (2) unexplained or inadequately explained failure to seek treatment or to
2 follow a prescribed course of treatment; (3) the claimant's daily activities; (4) work records; and
3 (5) physician and third-party testimony about the nature, severity, and effect of symptoms. See
4 Smolen, 80 F.3d at 1284 (citations omitted). It is also appropriate to consider whether the
5 claimant cooperated during physical examinations or provided conflicting statements concerning
6 drug and/or alcohol use. See Thomas v. Barnhart, 278 F.3d 947, 958-59 (9th Cir. 2002). If the
7 claimant testifies as to symptoms greater than would normally be produced by a given
8 impairment, the ALJ may disbelieve that testimony provided specific findings are made. See
9 Carmickle, 533 F.3d at 1161 (citing Swenson v. Sullivan, 876 F.2d 683, 687 (9th Cir. 1989)).

10 The ALJ provided the following summary of Plaintiff's statements and testimony:

11 . . . The claimant alleges that she is limited in her ability to understand and
12 remember information, concentrate and complete tasks, and generally
13 limited in her ability to perform work-related activities. It was also alleged
14 the claimant was forgetful, that her ability to follow both written and
15 verbal instructions was poor, that she did not get along with authority
16 figures, and that she did not handle stress well (Ex. B4E). It was further
17 alleged the claimant generally did not operate a motor vehicle or shop in
18 stores alone due to her history of anxiety. At the hearing, the claimant
19 alleged similar impairments and limitations. She testified to persistent
20 mood dysfunction and instability including frequent crying spells, and
21 chronic feelings of sadness and depression. She further alleged poor sleep
22 quality, lack of motivation to perform even basic activities such as
23 cleaning, and that the claimant's symptoms significantly limited her ability
24 to perform most daily activities (Hearing Testimony). The record
25 additionally includes a third-party function report, authored by Leonila
26 Agullana, the claimant's mother (Ex. B5E). The mother alleged the
27 claimant was severely limited in her ability to understand and remember
28 information, concentrate and complete tasks, get along with others, and
severely limited in her ability to perform most work-related activities (Ex.
B5E). The undersigned has considered all of the allegations offered in this
case.

After careful consideration of the evidence, the undersigned finds that the
claimant's medically determinable impairments could reasonably be
expected to cause the alleged symptoms; however, the claimant's
statements concerning the intensity, persistence and limiting effects of
these symptoms are not entirely consistent with the medical evidence and
other evidence in the record for the reasons explained in this decision.

As for the claimant's statements about the intensity, persistence, and
limiting effects of her symptoms, they are inconsistent with the objective
evidence. Inconsistent with the allegation of disabling mental limitations,
objective mental status examinations frequently documented the claimant
with fully alert and oriented cognition, grossly normal thought processes,
normal memory and concentration skills, normal judgment and insight,

1 cooperative demeanor, intact speech and language activity, and frequently
2 no signs of acute psychological distress (e.g., Ex. B3F/31, 35, 45-46, 67-
68; B6F/80-81, 84-85, 94-95).

3 CAR 22-23.

4 The ALJ then provided a concise summary of the objective medical evidence and
5 concluded as follows:

6 The objective evidence supports the claimant's residual functional
7 capacity. Objective mental status examinations that documented the
8 claimant with fully alert and oriented cognition, frequently normal mood
9 and affect, normal speech and language skills, cooperative demeanor,
10 intact memory and concentration, and intact judgment and insight, support
11 the conclusion that the claimant is able to perform simple, routine and
12 repetitive tasks. Such findings additionally support the conclusion that the
13 claimant can have occasional interaction with coworkers, supervisors, and
14 the public. Additionally, such objective findings support the conclusion
15 that the claimant can tolerate few changes in a routine work setting.

16 CAR 24.

17 Plaintiff argues that the ALJ's rationale is not supported by the record. See ECF
18 No. 12, pgs. 9-13. According to Plaintiff:

19 First, the ALJ cannot dismiss a claimant's testimony because the
20 objective medical records do not support the degree of limitation alleged. . . .

21 * * *

22 Second, the ALJ could not dismiss Ms. Agullana's testimony
23 because she retained a level of functioning that was well within functional
24 limitations that would allow her to maintain full time employment. Indeed,
25 quite contrary to this finding, Ms. Agullana testified that she slept 15
26 hours a day because it was hard for her to get up. (AR 40). Ms. Agullana
27 stated that when she was out of bed she would get something to eat, watch
28 a little bit of TV and then go back to bed. (AR 41). She further noted that
her mom does the chores because cannot do it. (AR 41). She noted that she
had a hard time completing a chore because she gets angry and depressed.
(AR 41). None of this activity is commensurate with a level of functioning
that was "well within functional limitations." Indeed, aside from this
assertion, the ALJ failed to provide any explanation of the activity level
that was well within functional limitations. As such, this could not
constitute a clear and convincing reason to dismiss Ms. Agullana's
testimony.

ECF No. 12, pgs. 9-13.

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At the outset, the Court finds that Plaintiff's argument that her daily activities as performed do not show an ability to perform full-time work is misplaced. The ALJ did not cite to Plaintiff's daily activities as a reason to give her statements and testimony little weight.

Plaintiff's argument that the ALJ erred by relying solely on inconsistency with the objective medical record is, however, well-taken. In this case, the ALJ provided one reason for discounting Plaintiff's statements and testimony – inconsistency with the objective medical findings. As explained above, this is not a sufficient reason when offered as the only reason. See Bunnell, 947 F.2d at 347-48. Because the ALJ has not offered legally sufficient reasons for discounting Plaintiff's subjective statements and testimony, the matter will be remanded.

IV. CONCLUSION

For the foregoing reasons, this matter will be remanded under sentence four of 42 U.S.C. § 405(g) for further development of the record and/or further findings addressing the deficiencies noted above. Accordingly, IT IS HEREBY ORDERED as follows:

1. Plaintiff's motion for summary judgment, ECF No. 12, is granted.
2. Defendant's motion for summary judgment, ECF No. 14, is denied.
3. The Commissioner's final decision is reversed and this matter is remanded for further proceedings consistent with this order.
4. The Clerk of the Court is directed to enter judgment and close this file.

Dated: April 15, 2024


DENNIS M. COTA
UNITED STATES MAGISTRATE JUDGE